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NO. 84-6792

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

PATRICK WAYNE KERR,

Petitioner,

v.

FRED FINKBEINER, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO GRANTING OF A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE LOWER COURT ERRED IN RULING THAT A COGNIZABLE CLAIM UNDER 28 U.S.C. § 2254 WAS NOT STATED BY A BARE ALLEGATION THAT THE TERMS OF ARTICLE III(a) OF THE INTERSTATE AGREEMENT ON DETAINERS ACT HAD BEEN VIOLATED?

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PRELIMINARY STATEMENT

The respondents (hereinafter "respondent") respectfully pray that a writ of certiorari to the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case on March 18, 1985, not be granted.

For purposes of uniformity, the parties will be referred to as the petitioner and the respondent, and page number references will be to the Appendix attached to the Petition for a Writ of Certiorari filed by the petitioner and will be designated (App. ___).

OPINION BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit is reported at 757 F.2d 604 (4th Cir. 1985).

JURISDICTION

The petitioner asserts that jurisdiction "is invoked under 28 U.S.C. § 1254(1) and Rule 20."

STATEMENT OF THE CASE

While incarcerated in North Carolina, petitioner was served with fugitive warrants from Spotsylvania County, Virginia, alleging certain felonies in that county. On or about May 17, 1979, petitioner filed with North Carolina authorities a "Motion for Request for a Speedy Trial Upon Pending Charge or For Dismissal of Detainer." On May 23, 1979, the Clerk of the Circuit Court of Spotsylvania County acknowledged receipt of petitioner's Motion and advised him that his request was docketed for July 16, 1979.

Petitioner was returned to Virginia from North Carolina on or about September 25, 1979. On October 11, 1979, petitioner's counsel wrote to the Judge of the Spotsylvania General District Court and requested that petitioner's preliminary hearing be continued from November 7, 1979 until at least November 28, 1979. Thereafter, on November 28, 1979, petitioner waived any preliminary hearing and consented that the proceedings could "be by direct indictment to the Spotsylvania Grand Jury at its next Term." On January 21, 1980, at the next term of the Spotsylvania Grand Jury, petitioner was indicted and his case was set for trial on May 22, 1980. On May 19, 1980, petitioner moved to dismiss the indictments against him because he had not been tried in accordance with the one hundred eighty-day time limit prescribed by Article III(a) of the Interstate Agreement on Detainers Act (§ 53.1-210 of the Code of Virginia). Petitioner's motion to dismiss the indictments was denied, and on May 22, 1980, petitioner was convicted by the Circuit Court of Spotsylvania County of robbery, breaking and entering, use of a firearm in the commission of a felony and petit larceny. Petitioner was sentenced to serve a total of twenty-nine (29) years in the Virginia State Penitentiary, sixteen (16) years of which were to run concurrently with sentences which already had been imposed upon petitioner.

Following petitioner's convictions, he petitioned the

Supreme Court of Virginia for a writ of error on the ground that he had not been tried in accordance with the time limits specified in the Interstate Agreement on Detainers Act. The Supreme Court of Virginia denied the petition for a writ of error, and petitioner petitioned the United States District Court for the Eastern District of Virginia for a writ of habeas corpus. Respondent moved to dismiss the petition on the grounds that petitioner had not stated a cognizable claim under 28 U.S.C. § 2254 and, alternatively, that petitioner through his actions had waived his right to assert that the Interstate Agreement on Detainers Act had been violated. (App. 29.) Finding it unnecessary to consider the alternative ground asserted by respondent, the District Court dismissed the petition on the ground that petitioner had not stated a claim which was cognizable under 28 U.S.C. § 2254. (App. 29-31.) Thereafter, the United States Court of Appeals for the Fourth Circuit affirmed the decision of the District Court that petitioner's allegation did not state a cognizable claim under 28 U.S.C. § 2254. (App. 33-40.)

ARGUMENT AGAINST GRANTING CERTIORARI

THE LOWER COURTS DID NOT ERR IN RULING THAT A COGNIZABLE CLAIM UNDER 28 U.S.C. § 2254 WAS NOT STATED BY A BARE ALLEGATION THAT THE TERMS OF ARTICLE III(a) OF THE INTERSTATE AGREEMENT ON DETAINERS ACT HAD BEEN VIOLATED

Petitioner argues that an alleged violation of Article III(a) of the Interstate Agreement on Detainers Act (hereinafter "IAD"), without any allegation of prejudice resulting therefrom, states a claim which is a fundamental defect inherently resulting in a complete miscarriage of justice and which is cognizable under 28 U.S.C. § 2254. Petitioner asserts that those cases holding that a failure to try an accused within the time limits prescribed by the IAD is not a fundamental defect have so ruled in reliance upon the concept that only a breach of a constitutional guarantee may constitute a fundamental defect

resulting in cognizability under 28 U.S.C. § 2254. Petitioner alleges that concepts of fundamental fairness mandate that habeas corpus review extend beyond those rights directly related to the establishment of guilt or innocence. Finally, petitioner urges that his claim should be cognizable because he has "procedurally clean hands," and it is fundamentally unfair not to require the State to honor its obligations under the IAD when he has fully complied with the requirements of the IAD.

Article I of the IAD recognizes that detainers based on outstanding charges against prisoners can produce uncertainties which obstruct programs of prisoner treatment and rehabilitation, and implies that the IAD's purpose is to alleviate those uncertainties. To that end, Article I of the IAD encourages the expeditious and orderly disposition of detainers based upon charges outstanding against persons already incarcerated in other jurisdictions.

Citing this Court's decision in Davis v. United States, 417 U.S. 333 (1974), the Fourth Circuit held that the appropriate inquiry to determine if habeas relief is warranted is "whether the claimed error of law [is] 'a fundamental defect which inherently results in a complete miscarriage of justice,' and whether '[it]...present[s] exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent.'" Kerr v. Finkbeiner, 757 F.2d, at 606. Because the IAD was intended, in part, to protect prisoners against whom detainers are issued from being denied prison privileges and rehabilitation efforts, and because petitioner had not alleged any prejudice in his incarceration or in defending the charges against him from the claimed violation of the IAD, the Fourth Circuit held that petitioner's bare allegation that Article III(a) had been violated was not a fundamental defect entitling him to relief under § 2254 and did not present exceptional circumstances where the need for habeas relief was apparent. Kerr v. Finkbeiner, 757 F.2d, at 607.

Petitioner's argument that his claim should have been

cognizable under § 2254 misapprehends the nature of habeas corpus review, as well as ignores established principles of comity and federalism. As noted previously, federal habeas review is meant to correct fundamental defects inherently resulting in miscarriages of justice. Habeas review is not intended to be an additional appeal of issues decided adversely to habeas petitioners by State courts. Cf. Engle v. Isaac, 456 U.S. 107 (1982).

In Strickland v. Washington, ___U.S.___, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984), this Court clearly indicated that federal habeas corpus is concerned with the fairness of a prisoner's conviction and emphasized that the prisoner was not entitled to habeas relief unless he could establish actual prejudice resulting from the alleged constitutional deprivation. Similarly, in Barker v. Wingo, 407 U.S. 514 (1972), this Court noted the importance of a habeas petitioner establishing prejudice to his defense in establishing a speedy trial violation, a claim which is analogous to a violation of Article III(a) of the IAD.

Petitioner asserted his allegation regarding the violation of the IAD in Virginia state courts. Those courts found that petitioner's claims were without merit and denied petitioner's claims. Respondent submits that principles of comity demand that 28 U.S.C. § 2254 not be used to review those courts' decisions unless the petitioner can establish that the alleged violation of the IAD resulted in actual prejudice to his rights constituting a fundamental defect amounting to an inherent miscarriage of justice. Accordingly, respondent submits that the Fourth Circuit correctly ruled that an alleged violation of Article III(a) of the IAD is not cognizable under 28 U.S.C. § 2254 unless the petitioner has alleged facts showing that he suffered prejudice in his incarceration or in defending the charges against him as a result of the alleged violation of Article III(a).

Respondent also submits that the petitioner is incorrect in his assertion that he has "procedurally clean hands" and that it

is fundamentally unfair for him to have complied with all of the requirements of the IAD without requiring the State to honor its obligations. Respondent moved to dismiss the petition for a writ of habeas corpus in the United States District Court on the ground that petitioner, through his actions, had waived any right to claim that he had not been tried within 180 days of his request. See App. 29-31. Respondent's waiver argument was based on the fact that prior to the expiration of 180 days from petitioner's "request" for a speedy disposition, petitioner waived a preliminary hearing and consented that the proceedings could be by direct indictment by the next term of the Spotsylvania County Grand Jury. It was only after petitioner had been indicted by the next term of the Spotsylvania Grand Jury, which was conducted after the 180-day period had run, that petitioner moved to dismiss the indictment on the ground that there had been noncompliance with Article III(a). Respondent's motion to dismiss on the ground that petitioner had waived his rights under the IAD was not addressed by the District Court, however, because the District Court granted the motion to dismiss on the noncognizability ground and found it unnecessary to address the waiver issue. See App. 29-31. Accordingly, respondent says that petitioner does not have "procedurally clean hands" and that there is no merit to his argument that it was unfair not to require the State to honor its obligations under the IAD when he had fully complied with the requirements of the IAD.

CONCLUSION

For the reasons presented, the respondent respectfully contends that the issues raised in this case are neither important nor substantial and this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I, Todd E. LePage, Assistant Attorney General, am a member of the Bar of this Court, and on the 13th day of August, 1985, I mailed with first class postage prepaid, a copy of the Respondents' Brief in Opposition to Granting of a Writ of Certiorari to Robert C. Whitestone, Esquire, 10511 Judicial Drive, Suite 200, Fairfax, Virginia 22030, counsel for petitioner.

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